

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

RICHARD L. BIBBS,

Plaintiff,

v.

CIVIL ACTION NO. 5:11-cv-00519

NEW RIVER COMMUNITY AND
TECHNICAL COLLEGE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER
ADOPTING PROPOSED FINDING AND RECOMMENDATION**

The Court has reviewed the *Defendants New River Community and Technical College, President Ted D. Spring and Human Resources Director Leah Taylor's Motion to Dismiss Plaintiff's Complaint*¹ (Document 10), the supporting memorandum (Document 11), Plaintiff's opposition thereto (Document 13)² and Defendants' reply (Document 16). Defendants move for the dismissal of Plaintiff's Complaint on the grounds that Plaintiff did not effectuate service of process upon Defendants in a timely manner and in compliance with the Federal Rules of Civil Procedure. By *Order* (Document 6) entered on August 2, 2011, this action was referred to the

1 Plaintiff filed the instant complaint on August 1, 2011, wherein he asserts against Defendants various claims of employment discrimination based on his race and gender.

2 Plaintiff filed an opposition to Defendants' motion on May 14, 2012 (Document 13). On June 5, 2012, Magistrate Judge VanDervort construed Plaintiff's "Response to Defendants' Motion to Dismiss" as a "Motion for an Officer of the Court to Serve the Summons and Complaint upon Defendants." (Order (Document 18)). Magistrate Judge VanDervort granted the construed motion and directed the Clerk of Court to issue and serve process upon Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure. The Clerk reissued the summonses on June 5, 2012. (Document 21).

Honorable R. Clarke VanDervort, United States Magistrate Judge, for total pretrial management and submission of findings of fact and recommendations for disposition, pursuant to 28 U.S.C. § 636.

On June 5, 2012, the Magistrate Judge submitted *Proposed Findings and Recommendation* (“PF&R”) (Document 20) wherein he found that Plaintiff (1) has shown good cause for his failure to serve Defendants within 120 days after the Complaint was filed with this Court, (2) failed to properly effectuate service of process upon Defendants in May 2012, but (3) has until August 21, 2012, to serve Defendants. Consequently, the Court recommends that Defendants’ motion be denied as premature.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Objections to the PF&R were due by June 22, 2012. To date no party has filed any objections to the PF&R.³

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation* (Document 20). The Court **ORDERS** that the Defendants New River Community and Technical College, President Ted D. Spring and Human Resources Director Leah

³ A review of the document reveals that the Summons were returned executed by certified mail for each Defendant. On June 22, 2012, Defendants filed an answer to Plaintiff’s Complaint (Document 25).

Taylor's Motion to Dismiss Plaintiff's Complaint (Document 10) be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge VanDervort, to counsel of record, and to any unrepresented party.

ENTER: July 19, 2012


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA